

**KEEGAN WERLIN LLP**

ATTORNEYS AT LAW  
265 FRANKLIN STREET  
BOSTON, MASSACHUSETTS 02110-3113

(617) 951-1400

TELECOPIERS:  
(617) 951-1354  
(617) 951-0586

January 17, 2006

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station  
Boston, MA 02110

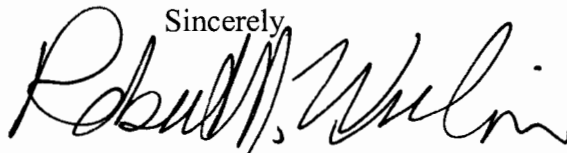
Re: D.T.E. 05-85, NSTAR Electric/NSTAR Gas

Dear Secretary Cottrell:

Enclosed for filing in the above-referenced matter is the Opposition of Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company to Cape Light Compact Motion to Extend Appeal Period in the above-referenced matter. Also enclosed is a certificate of service.

Thank you for your attention to this matter.

Sincerely

A handwritten signature in black ink, appearing to read "Robert N. Werlin", written in a cursive style.

Robert N. Werlin

Enclosure

cc: Service List

**COMMONWEALTH OF MASSACHUSETTS**

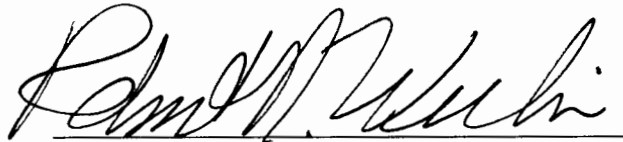
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

\_\_\_\_\_  
Boston Edison Company )  
Cambridge Electric Light Company )  
Commonwealth Electric Company )  
NSTAR Gas Company )  
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D.T.E. 05-85

**CERTIFICATE OF SERVICE**

I certify that I have this day served the foregoing document upon the Department of Telecommunications and parties of record in accordance with the requirements of 220 C.M.R. 1.05 (Department's Rules of Practice and Procedures).



Robert N. Werlin, Esq.  
Keegan Werlin LLP  
265 Franklin Street  
Boston, Massachusetts 02110  
(617) 951-1400

Dated: January 17, 2006

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Boston Edison Company )

Cambridge Electric Light Company )

Commonwealth Electric Company )

NSTAR Gas Company )

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D.T.E. 05-85

**OPPOSITION OF BOSTON EDISON COMPANY, CAMBRIDGE ELECTRIC  
LIGHT COMPANY, COMMONWEALTH ELECTRIC COMPANY AND NSTAR  
GAS COMPANY TO CAPE LIGHT COMPACT MOTION TO EXTEND  
APPEAL PERIOD**

**I. INTRODUCTION**

On December 30, 2005, the Department of Telecommunications and Energy (the “Department”) approved the Settlement Agreement filed by Boston Edison Company (“Boston Edison”), Cambridge Electric Light Company (“Cambridge”), Commonwealth Electric Company (“Commonwealth”) (together, “NSTAR Electric”), NSTAR Gas Company (“NSTAR Gas”, collectively with NSTAR Electric, the “Companies”), the Attorney General of Massachusetts (the “Attorney General”), the Low-Income Energy Affordability Network and Associated Industries of Massachusetts (collectively with the Companies and NSTAR, the “Settling Parties”) with regard to the Companies’ proposed base rate case that was to have been filed pursuant to G.L. c. 164, § 94 and ancillary matters.

On January 13, 2006, the Cape Light Compact (“CLC”) filed a motion to extend the appeal period for 30 days (the “Motion”) in the above-referenced matter. For the reasons set forth below, CLC has failed to meet the Department’s “good cause” standard for approval of such a motion and, consequently, the Motion must be denied.

## II. STANDARD OF REVIEW

The Department's enabling statute requires that any appeal of a Department order or ruling "shall be filed" within 20 days of the decision. G.L. c. 25, § 5. The Department has the jurisdiction to extend that date upon a showing of "good cause" if a request is made before the expiration of the appeal period. *Id.*; 220 CMR 1.11(11).

In reviewing a request for an extension of the statutory appeal period, the Department has consistently applied the following criteria in determining what constitutes "good cause":

Good cause is a relative term and it depends on the circumstances of an individual case. Good cause is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party.

See, e.g., Ruth C. Nunnally d/b/a L&R Enterprises, D.P.U. 92-34-A at 4 (1993) ("Nunnally"); NSTAR, D.T.E. 03-47-C at 10-11 (2004). In that regard, the Department has repeatedly held that enforcement of the 20-day appeal period, itself, serves the public interest:

The twenty-day appeal deadline indicates a clear intention on the part of the legislature and the Department to ensure that the decision of an aggrieved party to appeal a final order of the Department be made expeditiously. Swift judicial review benefits both the appealing party and other parties, and serves the public interest by promoting the finality of Department orders. See Notes, State Administrative Practice: An Illustrative Survey of the Procedure of the Massachusetts Department of Public Utilities, 67 Harv. L. Rev. 845, 858-859 (1954) ("Quick judicial review of agency action is insured by statutory provision that any court proceeding affecting an order of the commission or to which the commission is a party shall have preference over all other civil proceedings."); see also Silvia v. Laurie, 594 F.2d 892, 893 (1st Cir. 1978) (held that "[w]hile the application of [the time limits of Fed. R. App. P. 4] may lead to apparently harsh results in some cases, it serves important interests of finality") (citation omitted).

Nunnally at 4-5; see also NYNEX, D.P.U. 94-50-B at 6-7 (1995); The Berkshire Gas

Company, D.T.E. 01-56-A at 2 (2002); NSTAR, D.T.E. 03-47-C at 10 (2004).

### **III. ARGUMENT**

CLC's Motion fails to meet the Department's standards for approval of an extension of the statutory appeal period because the Motion does not establish the presence of "good cause" that could justify the granting of the Motion. In fact, the Motion does not even bother to address the Department's standard of review and relevant precedent.

Because the Department acknowledges that the legislative structure for appeal of a Department order evinces a clear public interest in swift judicial review and the finality of Department orders (Nunnally at 4-5), CLC is under a heavy burden to demonstrate a countervailing public interest that would justify delay in the appellate process. The Motion utterly fails to sustain that burden.

The Motion's request for additional time is based on claims that "its counsel and technical experts require additional time to prepare a petition for appeal" and that CLC "intends to use the period of the extension to attempt to engage in discussions with the parties to the settlement approved in the Order...in order to explore means of addressing [CLC's] concerns..." (Motion at 1-2). Neither of these reasons constitutes "good cause" or is a countervailing public-interest consideration that would justify a delay in the statutory appeal deadline.

Regarding the argument that counsel and CLC's technical experts need more time to prepare the petition for appeal, it stretches credibility beyond belief that CLC does not yet know the basis of its objection to the Settlement Agreement or the Department's order. Moreover, a petition for appeal to the Supreme Judicial Court (the "Court") is not

the final brief before the Court and need not include every detail of an appellant's argument. Additional time to prepare such a petition for appeal is not necessary, is not in the public interest and doesn't outweigh the public-interest considerations established by the Legislature in setting deadlines for appeals.

CLC's second argument, i.e., the request for more time to engage in discussions with the Settling Parties, is also unavailing. The Settlement Agreement was negotiated in good faith by the Companies and representatives of all of the Companies' customers. As the Department noted in its approval order, the Settlement Agreement was supported by "a broad range of interest including residential, low-income, and business customers." D.T.E. 05-85, at 31. The Companies will not renege on their commitments included in the Settlement Agreement by negotiating changes with the CLC.<sup>1</sup> As the Companies stated in their response to comments filed on the Settlement Agreement, the terms of the Settlement Agreement are not severable because they include "many trade-offs and compromises representing the varied interests of the Settling Parties" (NSTAR Reply Comments at 9). The Department found that "[t]aking the Settlement [Agreement] as a whole,...on balance, [it] is consistent with both applicable law and the public interest and results in just and reasonable rates...". D.T.E. 05-85, at 33. The Companies have no intention of upsetting that balance, especially under threat of an appeal.

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<sup>1</sup> Apparently, CLC believes that customers in its service area are entitled to better treatment than other customers of the Companies (Motion at 2 ("...ratepayers on Cape Cod and the Islands...have an interest in ensuring that this proceeding results in an outcome favorable to them")). The Companies take issue with the implication either that the Settlement Agreement disadvantages customers on Cape Cod and the Islands, or that such customers should be favored over other customers. All customers of NSTAR Electric and NSTAR Gas should and indeed will share in the benefits of the Settlement Agreement.

CLC suggests that an extension of the appeal period will enable it to pursue settlement discussions with the Companies and ostensibly other parties (Motion at 1-2). Although the Companies are willing to listen to reasonable proposals from any entity, there are not any settlement discussions currently underway, and CLC's attempt to introduce such a process as a reason to support a 30-day extension of an appeal period is inappropriate.<sup>2</sup> Accordingly, CLC's argument is baseless.

The Motion ignores Department precedent and the underlying standard of review for delaying the appeal process. Its reasons for wanting to extend the appeal period, *i.e.*, additional time to prepare the petition and time to negotiate changes to the approved Settlement Agreement, are without merit and do not outweigh the oft-repeated public interest in an expeditious appellate process and finality of Department orders.<sup>3</sup> The Motion fails to establish the presence of good cause and should be denied.

#### **IV. CONCLUSION**

For the reasons set forth above, the Motion fails to meet the Department's standard of review for approval of an extension of the appeal process and should be denied.

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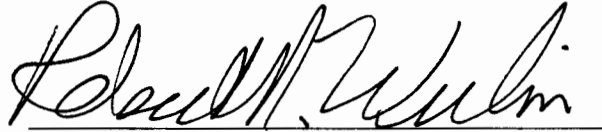
<sup>2</sup> For that matter, if the CLC were truly serious about settling, it could just as easily file its appeal with the Court (if it intends on appealing), and approach the Companies and other parties with its settlement proposal at that time.

<sup>3</sup> CLC also makes the bold suggestion that, since the Attorney General represents the public interest and the public interest supports an extension of the appeal period, the Attorney General's interests are the same as CLC's. The Companies will let the Attorney General speak for himself, but clearly the Attorney General's active support for the Settlement Agreement and the myriad benefits to customers that will result therefrom make CLC's argument dubious at best.

Respectfully submitted,

**BOSTON EDISON COMPANY  
CAMBRIDGE ELECTRIC LIGHT COMPANY  
COMMONWEALTH ELECTRIC COMPANY  
NSTAR GAS COMPANY**

By Their Attorneys,

A handwritten signature in black ink, appearing to read "Robert N. Werlin", is written over a horizontal line.

Robert J. Keegan  
Robert N. Werlin  
Keegan Werlin LLP  
265 Franklin Street  
Boston, Massachusetts 02110  
(617) 951-1400 (telephone)  
(617) 951-1354 (facsimile)

Date: January 17, 2006